IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5529 of 1987
with
CIVIL APPLICATION NO. 1290 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GORDHANBHAI S PAREKH
Versus
DISTRICT DEVLOPMENT OFFICER

Appearance:
1. Special Civil Application No. 5529 of 1987
MR NS SHETH for Petitioner No. 1
MR BS PATEL for Respondent No. 1
MRS RANJAN B PATEL for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR. SOMPURA, AGP for Respondent No. 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 12/02/2002

ORAL JUDGEMENT

1. Mr. Sheth, learned counsel states that Gordhanbhai Somabhai Parekh-petitioner has expired. Therefore, he files Civil Application for bringing heirs and legal representatives of the deceased Gordhanbhai Somabhai Parekh on record. The Civil Application is taken on record. The same is allowed. The Civil Application stands disposed of accordingly.

2. Gordhanbhai Somabhai Parekh-petitioner has filed this petition for a writ of mandamus or any other writ or direction on the respondents to pay up the petitioner's retirement dues, namely pension, gratuity and group insurance amount forthwith from the year 1944. This petition was filed somewhere in October 1997. Thereafter, the matter has been admitted and now the matter is placed for hearing before this court today.

3. The facts giving rise to this petition are as under:

3.1 It is the case of the petitioner that he was working as compounder in Desar Medical Trust since 1944. It is stated that under Pharmacy Act, 1948 he is a registered pharmacist with the Pharmacy Council. It is stated that trust affairs were taken over by the panchayat on 23.3.1974. Initially, the petitioner got fixed pay of Rs. 181/-. It is stated that his services under the panchayat were confirmed in 1978 by the District Panchayat Selection Committee by its order dated 21.7.1978 in the pay scale of Rs. 260/- to Rs. 400/-. Since the petitioner was a qualified compounder as he was a registered pharmacist with the Pharmacy Council under the Pharmacy Act, 1948, his pay scale was corrected on 18.4.1984 as that being of Rs. 330/- to Rs. 560/- with retrospective effect. It is stated that the petitioner was given selection grade from 27.1.1986 in the pay scale of Rs. 425/- to Rs. 600/-. The petitioner retired on 28.2.1986. When he retired his basic pay Rs. 440/- in the pay scale of Rs. 425/- to Rs. 600/-. Till date the petitioner has not obtained his retirement benefits.

3.2 It is submitted that petitioner's pensionable service was to be computed from 16.3.1974 when the trust was taken over by the respondents but not later than 27.3.1974 in any case as the petitioner was retained by the respondents in service.

3.3 In view of the same, the petitioner made representation before the District Development Officer on

9.3.1987 regarding retirement dues. He has also represented his case before the President, Baroda District Panchayat, respondent No. 2. He has also represented his case on 18.3.1987 before the Medical Officer but he has not received his Group Insurance amount.

4. As the petitioner has not been able to receive pension and other retirement benefits, the present petition was filed in October 1987.

5. On behalf of District Development Officer one Mr. R.D. Bhutaia, D.D.O., District Panchayat, Vadodara, has filed affidavit somewhere in April, 1988. In the affidavit it has been stated that in view of the order of the Extra Assistant Judge dated 21.2.1974 application filed by the trustee of the trust was allowed and directed to hand over movable and immovable properties of the trust to the Baroda District Panchayat for managing the trust as per the objects of the trust and to carry out the administration and management of the trust in the best possible manner. The District Panchayat, Baroda, took over the possession of the movable and immovable properties of the trust and named the dispensary and maternity home as Primary Health Centre, Desar. In the order, the staff including the petitioner who were working under the trust, were allowed to continue in service on the condition that finalisation of the services would be according to their selection under the panchayat and as per the qualifications. The respondent has produced the order dated 16.3.1974. Later on the petitioner was selected by the District Panchayat Selection Committee and he was appointed by the order dated 21.7.1978 in the cadre of compounder in pay scale of Rs. 260-400. It was stated that the petitioner was paid monthly salary of Rs. 181/- which he used to draw under the trust. The said order has been produced in the record. The petitioner retired on 28.2.1986 and as he had completed service of only seven years seven months and seven days from 21.7.1978, there was no question of any pension being granted to the petitioner as his services were not pensionable, according to Pension Rules. It is submitted that according to revised scheme of Pension Rules, at least ten years' qualifying service is necessary and the petitioner has not put in ten years of qualifying service. Therefore, it was stated by letter dated 21.3.1987 that the petitioner is not entitled to any pension. However, this fact has not been mentioned in the petition which has been filed. A copy of the letter dated 21.3.1987 is annexed with the affidavit.

6. As regards dues on account of Group Insurance Scheme and Gratuity, it was submitted that the amount of Rs. 805.85 has been sanctioned by order dated 27.1.1988 and amount of Rs. 8733.60 has been sanctioned by order dated 8.2.1988 towards gratuity. Copies of the said orders have been annexed with the affidavit. It was stated that the petitioner is not eligible for pension as per the Government Resolution dated 23.5.1972 as he has not completed ten years' qualifying service and he has been accordingly replied by letter dated 21.3.1987. In view of the same, it will be seen that the petitioner has already been paid whatever is due to him for group insurance scheme as well as for gratuity and as he was not eligible for pension, no pension was sanctioned to him. In view of the same, the grievance of the petitioner cannot be redressed in the present petition and the same is required to be dismissed.

7. I have gone through the record of the case. In my view the dispensary and maternity home of the trust was handed over to the District Panchayat under the orders of the court as the trustees were not able to financially manage the trust property, that is the dispensary and maternity home. It is stated that the petitioner along with other staff was continued as per the order dated 16.3.1974 with a specific condition that the decision regarding services will be taken later on if they are qualified and selected by the Selection Committee. In that view of the matter, the petitioner cannot claim for his continuity of the service. In my view as the petitioner was selected by the District Selection Committee and he was appointed as compounder purely on temporary on temporary basis as per the order dated 21.7.1978 and thereafter as per the said order the petitioner was freshly appointed and when he had retired in the year 1986 he had completed only seven years, seven months and seven days of service under the District Panchayat. In my view the authority has replied to the application of the petitioner by its letter dated 21.3.1987 that he was not eligible for pension. However, the petitioner has suppressed the said fact in the petition.

8. As regards group Insurance, the sanctioning authority has already sanctioned and brought the same today and therefore the petitioner cannot make grievance in this behalf. It may be noted that the dispensary and maternity home run by the trust could not be run by the trustees on account of financial difficulties and the District Panchayat has undertaken to run the dispensary

and the trust converted into Primary Health Centre and though there was no condition regarding the staff, the District Panchayat tried to continue the staff on the same basis on which they were employed by the trust and later on in 1978 has taken up the petitioner in regular establishment as compounder and he has been paid whatever is due to him on account of group insurance scheme and on account of gratuity and as he has not put in ten years of qualifying service under the District Panchayat, he was not eligible for pension.

9. In view of the above, I am satisfied that the petitioner having not completed qualifying service of ten years, is not eligible for pension. So far as the other grievances that is non-payment of group insurance amount and gratuity amount are concerned, since the authority has sanctioned the said claims of the petitioner, the grievances of the petitioner do not survive.

10. In the result, the petition is rejected. Rule is discharged with no order as to costs.

(K.M. MEHTA, J)

(pkn)